

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9432 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PRANAV RAJ PAPER MILLS

Versus

STATE OF GUJARAT

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Appearance:

MR JR NANAVATI for Petitioner

MR KAMAL MEHTA ASST. G.P for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 09/12/98

ORAL JUDGEMENT

(Per R. Balia, J)

1. Brief facts which led to filing of this petition are that the petitioner is private limited company incorporated under the Indian

Companies Act by the certificate of incorporation dated 30.5.1982. It has been allotted three plots bearing Nos. 188, 189 and 190 on lease by GIDC, Vapi in 1984. In the first instance, the petitioner started manufacturing of plastics materials in January 1988 in Plot No. 188. At that time Sales Tax Incentive Scheme for Industries 1986 introduced by Government Resolution dated 6.5.1986 was in force which inter alia provided for sales tax exemption of eligible units under the scheme, subject to a maximum limit on the basis of capital investment to be computed under the detailed provisions of the scheme by competent authority. The provisions applied for grant of such exemption vide application dated 2.8.1988 which was ultimately granted in respect of that unit in 1991. Thereafter the petitioner established another unit for manufacturing of paper on the remaining plots Nos. 189 and 190 which commenced production on 1/4.6.1993. The period of operation of Sales Tax Incentive Scheme for Industries 1986 which was originally to last upto 31.3.1991 had been extended to 30.6.93, that is to say, the eligible units which commenced production before 30.6.1993 became eligible units to avail the benefit under the scheme. For establishing its unit for the manufacture of paper which commenced production on 1.6.1993, the petitioner made an application for grant of exemption certificate in respect of it as new unit on 4.7.1993. On 18.9.96, the petitioner were granted eligibility certificate for exemption as new industrial unit by the competent authority. In the first instance by his order dated 25.3.1997, the Additional Industries Commissioner issued an amendment in the certificate for sales tax exemption in the case of the petitioner by substituting the exemption in respect of a new industrial unit that the company is an existing unit which has carried out diversification involving an increase in the value of fixed capital investment by not less than 25%. Accordingly, the new original exemption limit computed as is available in the case and new industrial unit was reduced to the percentage exemption of new capital investment applicable in the case of diversification to Rs.31,41,300/- from 41,58,400/-. This order had been made without affording any opportunity of hearing to the petitioner. The petitioner challenged that order by way of Special Civil Application No. 2978 of

1997. Petition was allowed on the limited ground that the order affecting the right of the petitioner is made without affording an opportunity of hearing and was thus in violation of principles of natural justice. Treating the impugned order as show cause notice, respondent was directed to decide the question afresh. Pursuant to this opportunity, the petitioner appeared before the Industries Commissioner, who, by his order dated 23.12.1997 held the case of the petitioner as of diversification and not of new unit, and reduced the exemption limit to Rs.31,41,300/- at the rate of 30% of the eligible new capital investment. The amendment was primarily founded on the fact that the GSFC while considering the case of grant of subsidy under the capital investment subsidy scheme for new industries 1986 dated 5.5.1986 had considered the petitioner's case as of diversification and on the definition of diversification given in the scheme itself. It is this order dated 23.12.1997, which is under challenge in this petition.

2. Two fold contentions have been raised before us. Firstly, that the determination of eligibility and fixing the exemption limit by issue of certificate of exemption under the incentive scheme of 1986 is quasi judicial function of the competent authority, unless there is a power of review conferred under any relevant provisions, it had no jurisdiction to review its earlier order. Secondly, on merit of the issue, petitioner contended that the scheme read as a whole leaves no room of doubt that the diversification can only be referrable to such new products which are connected with and in the same line of business as of the existing project of the manufacture and not altogether a new product. Any other interpretation would lead to serious anomalous position making the interpretation look absurd.

3. Having carefully considered, we find substance in the contention. The exemption from sales tax which is levy authorised by the Sales Tax Act is also creature of statute and flows from provisions of the Act itself, notwithstanding that the policy in the matter of grant of exemption may be formulated by different Government authorities according to the requirement of State policy. The Government resolution dated 6.5.1986 delineating

the sales tax incentive scheme of Industries 1986 offered two alternative incentives, firstly, exempting from payment of tax and secondly deferring the payment of tax. Both operate in different fields. So far as exemption from payment of tax is concerned, it squarely comes within the provisions of Section 49 of the Sales Tax Act. Section 49(1) are exemptions granted by legislative fiat itself. Subsection (2) of Section 49 enables Government, if it considers necessary to do so in the public interest, to exempt in specified class of sales or of specified sales or of purchases from payment of the whole or any part of the tax payable under the provisions of this Act by notification under official gazetted.

4. Pursuant to the resolution of the Government laying down the policy for granting exemption, notification under Section 49(2) has been issued by inserting Entry 175 in the schedule appended to Notification under Section 49(2). It postulates that ultimately the exemption certificate is to be issued by Commissioner of Sales tax on being satisfied about the eligibility of the unit for exemption. For the purpose of eligibility of the unit claiming exemption different procedure has been prescribed which ultimately culminates in issuing a certificate by Industries Commissioner or the General Manager of the District Industries concerned as the case may be stating that now industry has been commissioned on the date specified therein, being any date during the operative period of scheme. The Commissioner of Sales Tax issues exemption certificate on the basis of such certificate by the Industries Commissioner and ultimately it is on the basis of the certificate issued by the Commissioner of Sales Tax that the exemption become operative. Under the provisions of the Act, it is the authority appointed under the Act who are responsible for its implementation including the exemption granted by it. The exemption which is to be given effect to at the time of assessment of a dealer depends on the exemption certificate issued by the Commissioner of Sales Tax.

5. Section 72 of the Gujarat Sales Tax envisages that the Commissioner may at any time within two years from the date of the

communication of the order passed by him, to the person affected by such order, on his own motion, rectify any mistake of fact apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such order. The procedure which ultimately culminates in the Commissioner issuing exemption certificate has been laid down by way of guidelines issued in that regard. The guideline which has been produced on the record issued as on 21.4.1981 which were in relation to the earlier scheme of the like nature. It inter alia envisaged that the process of scrutinising the consideration of exemption claimed of a dealer commences with application in this behalf by the claimant within 120 days from the date of commencement of production by concerned new industry and his exercise of option whether to elect tax exemption incentive or tax deferment incentive which election is final. As the eligibility and the exemption depends on establishing certain facts it is envisaged that before the eligibility certificate is issued by the Industries Department stating the date on which the eligible unit has commenced production, the correctness of facts stated in the application as to the date of commencement of production, the investments made therein including in the case of expansion or diversification of existing unit whether such expansion or diversification has taken place after commencement of the scheme, are scrutinised. On the verification of these facts on scrutiny, the Industries Commissioner issues a certificate of eligibility that a new industry has commenced production on such and such date. On receipt of this eligibility certificate, acting on that the Commissioner issues exemption certificate. It is on communication of that exemption certificate to the concerned dealer that he becomes entitled to avail of exemption in the course of his assessments.

6. In our considered opinion, the exemption certificate thus being in the nature of an order passed by the Commissioner as to the eligibility and exemption available to a dealer, under Section 49 it is within jurisdiction of Commissioner of Sales Tax under the Sales Tax Act to rectify such order if conditions for such rectification are shown to exist, namely, the mistake is apparent from record. But no such power has been conferred

on other authorities concerned with the enquiry into the correctness of facts about the stage prior to issuance of exemption certificate. The Industries Commissioner in our opinion, had no jurisdiction to revise its own order itself which has the effect of modifying or nullifying the exemption certificate issued by the Commissioner while the Commissioner of Sales Tax has not exercised such jurisdiction. The power of review in the case where an order has to be made by an authority on an enquiry which is not in administrative in nature, but of quasi judicial, is a creature of statute. No authority has inherent power de hors provisions of the law under which such power is conferred to review and revise his own order.

7. Viewed from yet another point, if one looks at the resolution of 6.5.86 itself, it goes to show that power has been conferred to issue ultimate certificate jointly on the Commissioner of Industries and Commissioner of Sales Tax under clause (7) of that resolution. That also makes it abundantly clear that as the sales tax authorities are functionaries to implement the sales tax laws including exemptions granted therein, exemption certificate required to be issued have a joint responsibility of Industries Commissioner and Sales Tax Commissioner. The power of revision or review of such order, even if assumed to exist, at any rate cannot vest in Industries Commissioner alone, even independent of the provisions of Sales Tax Act. If certificate is to be issued jointly by two authorities, in the absence of provision to contrary, power to review or rectification can be exercised only jointly by the two authorities and not by one to the exclusion of the other.

8. We are therefore of the opinion that the exercise of power by Industries Commissioner in the present case was without jurisdiction.

9. On the merit of issue also we find substance in the contention of the petitioner. The relevant provision of the scheme of exemption is that specified manufacturer is exempted from payment of whole of tax on the sales of goods manufactured by him. Under Annexure II appended to Entry 175 for the purposes of that entry expression 'specified manufacturer' has been defined to mean a person in the State of Gujarat who establishes the new industry on or after

1.4.1986, but not after 31.3.1991 in any of the designated areas. As we have noticed earlier that the terminal date of 31.3.1991 has since been extended from time to time upto 30.6.1993. Clause (b) of Annexure II makes expression of 'new industry' to mean an industry which has been commissioned at any time during the period beginning 1.4.86 and ending with the terminals of the scheme and includes expression of diversification. Thus for the purpose of eligibility consideration the expansion or diversification both are also termed as new industry as well as the unit which has newly been established and commenced production for the commencement of the scheme. Within the span of term 'new industry' three classes have been formed, namely, the new unit, the 'expansion' and the 'diversification'. Both the terms 'expansion' and 'diversification' have been defined under Explanation 1 appended to clause (b) of Annexure II appended to entry 175. Explanation 2 has also same bearing on the controversy raised before us. Reproduced herein-below is clause (b) with Explanation 1 and Explanation 2 for ready reference:

(b) The expression New Industry means industry which has been commissioned at any time during the period beginning from 1st April 1986 and ending on 31.3.1991 and includes expansion or diversification.

"Explanation (1)

For the purpose of this clause -

(i) "Expansion" means increase in the value of fixed capital investment by not less than 25% of the net fixed assets of the existing project and accompanied by an increase of production to the extent of at least 25% of the original installed capacity;

(ii) "Diversification" means commencement of manufacturing of new product by the specified manufacturer provided the total fixed capital investment in such diversification exceeds at least 25 per cent of the value of

net fixed assets of original projects;

Explanation.-(2)

For the purpose of items (i) and (ii) above the total exemption admissible in respect of expansion or diversification shall be restricted to such purchases made for use in additional manufacture of goods only on account of such expansion or diversification and sales of such additionally manufactured goods on account of the said expansion or diversification

10. A perusal of the definition goes to show that the expansion and diversification and the admissible exemption in the case of expansion and diversification has an integral link with the original project and they do not apply to independent industry. The expansion is considered to be one which increases in the value of fixed assets of capital investment by not less than 25% of the net fixed assets of the existing project coupled with an increase of production to the extent of at least 25% of the original installed capacity. This provision makes it abundantly clear that this applies to increase in the installed capacity of an existing unit and does not apply at all to come into existence of an altogether and independent new unit of the same product. Diversification has been defined to mean manufacturing of new product by specific manufacture providing totally fixed capital investment in such diversification exceeds atleast 25% of the value of net fixed assets of original projects. Here also, if the linkage with the original project was not necessary the linkage with the 25% of the value of the fixed assets of the original purchase would have been redundant. If manufacture of any new product was to fall into diversification, it would have been sufficient to state that diversification means commencing of manufacture of new product by the specified manufacturer. In any event the capital investment whether for new unit for expansion or diversification that would have been taken into consideration for the purpose of fixing exemption limit would have been new investment and not the existing investment. More over, as we have noticed that the definition of expansion does not



extend to establishing a new unit which has no relation to enhancement in the installed capacity of existing project. Such new unit is eligible for benefit as new industry and not an expansion of existing project leads to irresistible conclusion that if a specified manufacturer establishes a new unit of the same product he is entitled to claim full exemption as eligible new unit. If the construction suggested by the learned counsel for the revenue is accepted that the diversification means manufacturer of any product, unconnected with the original project, it would lead to startling result that while establishing a new unit for manufacturing the same product would entail exemption to the full limit, commencing of a new product altogether independent of existing product would entail a lesser amount of exemption. Such irrational construction has to be avoided unless the language of the statute is clear and it leads to no other conclusion.

11. One may notice the significance of investment of more than 25% of already invested capital in the original project and coupled with the Explanation 2, which restricts the exemption admissible in respect of expansion or diversification with reference to exemption availed in connection with the original product and confining to the purchases made for additional manufacture of goods only on account of such expansion or diversification and sales of such additionally manufactured goods on account of the said diversification which makes it as an integral part of existing project to fall within the purview expansion and diversification for the purpose of conferring lesser extent of exemption than as a new industry which otherwise it is.

12. It is not disputed before us that the manufacture of paper and PVC material are nowhere connected with each other. Both the units have been independently established on different plots of land and there is no connection between installed capacity or otherwise investment made in each other. The use of word 'additional manufacture of goods' in Explanation 2 further goes to suggest that the expansion and diversification should lead to additional value in the product of the original project whether by way of increase in installed capacity or as a result of new product in the same line, or a new product

which is alike to the product already manufactured. In this connection we may also notice that entry 175 has followed the Government Resolutions laying down the policy for such incentives vide its resolution dated 6.5.86. In the said resolution also the diversification has been defined. It has been defined to mean 'launching of new product'. The authority of both, the resolution dated 6.5.86 and entry 175 being the same viz State of Gujarat, and one is issued to give effect to another, it is legitimate to look at the said resolution to find out the true meaning of same term expressed in later notification, particularly when the literal construction in the background of scheme gives rise to apparent dichotomy noticed by us casting doubt about its true meaning. The expression 'launching of new product line' supports the conclusion to which we have reached, to correlate the diversification in some way with the line of product of existing project or projects.

13. If viewed in that light, there is no dichotomy left in the expression expansion and diversification in giving effect to the term new industry defined in clause (b) of Annexure II to entry 175 in the notification under Section 49(2) of the Act. In this connection one must keep in mind that once it is established that an assessee is entitled to exemption in interpreting the scheme it should be given full effect to.

14. As a result, we allow this petition, quash the impugned order dated 23.12.1997. Parties are left to bear their own costs.

(Rajesh Balia, J)

(A. R. Dave, J)